

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 261**

Citations Affected: IC 32-25.

Synopsis: Condominium common areas and facilities. Conference committee report for ESB 261. Provides that all or part of the common areas and facilities of a condominium may be conveyed or encumbered if at least 95% of the co-owners agree to the action. Provides that a different percentage of votes may be required to convey or encumber the common areas and facilities if the percentage is specified in: (1) the condominium declaration or condominium association bylaws; or (2) an amendment to the declaration or bylaws, if the amendment is approved by the co-owners. Specifies that the different percentage of votes in the declaration or bylaws may not allow less than 95% of the co-owners to convey or encumber all or part of the common areas or facilities. Provides that proceeds from the conveyance or encumbrance of common areas and facilities must be distributed to co-owners as common profits. **(This conference committee report removes provisions that provided ESB 261 applied only to condominiums located on the shore of a lake in certain townships and in certain counties.)**

Effective: July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 261 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 32-25-4-3 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Each
- 4 condominium unit owner is entitled to an undivided interest in the
- 5 common areas and facilities as designated in the declaration. Except as
- 6 provided in subsection (b), the undivided interest must be expressed as
- 7 a percentage interest based on:
 - 8 (1) the size of the unit in relation to the size of all units in the
 - 9 condominium;
 - 10 (2) the value of each condominium unit in relation to the value of
 - 11 all condominium units in the condominium; or
 - 12 (3) the assignment of an equal percentage undivided interest to
 - 13 each condominium unit.
- 14 An undivided interest allocated to each condominium unit in
- 15 accordance with this subsection must be indicated in a schedule of
- 16 undivided interests in the declaration. However, if the declaration does
- 17 not specify the method of allocating the percentage undivided interests,
- 18 an equal percentage undivided interest applies to each condominium
- 19 unit. The total undivided interests allocated in accordance with
- 20 subdivision (1) or (2) must equal one hundred percent (100%).
- 21 (b) With respect to an expandable condominium, the declaration
- 22 may allocate undivided interests in the common area on the basis of

- 1 value if:
- 2 (1) the declaration prohibits the creation of any condominium
- 3 units not substantially identical to the condominium units
- 4 depicted on the recorded plans of the declaration; or
- 5 (2) the declaration:
- 6 (A) prohibits the creation of any condominium units not
- 7 described in the initial declaration; and
- 8 (B) contains a statement on the value to be assigned to each
- 9 condominium unit created after the date of the declaration.
- 10 (c) Interests in the common areas may not be allocated to any
- 11 condominium units to be created within any additional land until the
- 12 plats and plans and supplemental declaration depicting the
- 13 condominium units to be created are recorded. Simultaneously with the
- 14 recording of the plats and plans for the condominium units to be
- 15 created, the declarant must execute and record an amendment to the
- 16 initial declaration reallocating undivided interests in the common areas
- 17 so that the future condominium units depicted on the plats and plans
- 18 will be allocated undivided interests in the common areas on the same
- 19 basis as the condominium units depicted in the prior recorded plats and
- 20 plans.
- 21 (d) Except as provided in **section 3.5 of this chapter and in**
- 22 **IC 32-25-8-3**, the undivided interest of the owner of the condominium
- 23 unit in the common areas and facilities, as expressed in the declaration,
- 24 is permanent and may not be altered without the consent of the
- 25 co-owners. A consent to alteration must be stated in an amended
- 26 declaration, and the amended declaration must be recorded. The
- 27 undivided interest may not be transferred, encumbered, disposed of, or
- 28 separated from the condominium unit to which it appertains, and any
- 29 purported transfer, encumbrance, or other disposition is void. The
- 30 undivided interest is considered to be conveyed or encumbered with the
- 31 condominium unit to which it appertains even though the undivided
- 32 interest is not expressly mentioned or described in the conveyance or
- 33 other instrument.
- 34 (e) The common areas and facilities shall remain undivided. A
- 35 condominium unit owner or any other person may bring an action for
- 36 partition or division of any part of the common areas and facilities if
- 37 the property has been removed from this chapter as provided in
- 38 IC 32-25-8-12 and IC 32-25-8-16. Any covenant to the contrary is void.
- 39 (f) Each condominium unit owner:
- 40 (1) may use the common areas and facilities in accordance with
- 41 the purpose for which the common areas and facilities were
- 42 intended; and
- 43 (2) may not, in the owner's use of the common areas and facilities,
- 44 hinder or encroach upon the lawful rights of the other co-owners.
- 45 (g) The:
- 46 (1) necessary work of:
- 47 (A) maintenance;
- 48 (B) repair; and
- 49 (C) replacement;
- 50 of the common areas and facilities; and
- 51 (2) making of any additions or improvements to the common

1 areas and facilities;
 2 may be carried out only as provided in this chapter and in the bylaws.

3 (h) The association of condominium unit owners has the irrevocable
 4 right, to be exercised by the manager or board of directors, to have
 5 access to each condominium unit from time to time during reasonable
 6 hours as is necessary for:

7 (1) the maintenance, repair, or replacement of any of the common
 8 areas and facilities:

9 (A) in the condominium unit; or

10 (B) accessible from the condominium unit; or

11 (2) making emergency repairs in the condominium unit necessary
 12 to prevent damage to:

13 (A) the common areas and facilities; or

14 (B) another condominium unit.

15 SECTION 2. IC 32-25-4-3.5 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2007]: **Sec. 3.5. (a) Except as otherwise provided in a statement**
 18 **described in:**

19 **(1) IC 32-25-7-1(a)(10) and included in:**

20 **(A) the declaration; or**

21 **(B) an amendment to the declaration, if the amendment is**
 22 **approved by at least ninety-five percent (95%) of**
 23 **co-owners; or**

24 **(2) IC 32-25-8-2(12) and included in:**

25 **(A) the bylaws; or**

26 **(B) an amendment to the bylaws, if the amendment is**
 27 **approved by the percentage of votes set forth in the bylaws**
 28 **under IC 32-25-8-2(11);**

29 **part or all of the common areas and facilities of a condominium**
 30 **may be conveyed or subjected to a security interest by the**
 31 **association of co-owners if at least ninety-five percent (95%) of the**
 32 **co-owners, including at least ninety-five percent (95%) of the**
 33 **co-owners of condominium units not owned by the declarant, agree**
 34 **to the action. However, if the common areas and facilities proposed**
 35 **to be conveyed or encumbered under this section include any**
 36 **limited common areas and facilities, all the owners of the limited**
 37 **common areas and facilities to be conveyed or encumbered must**
 38 **agree to the conveyance or encumbrance.**

39 **(b) An agreement to convey or encumber common areas and**
 40 **facilities under this section must be evidenced by an agreement:**

41 **(1) executed in the same manner as a deed or any other**
 42 **instrument recognized by the state for the conveyance or**
 43 **transfer of interests in title; and**

44 **(2) signed by:**

45 **(A) at least ninety-five percent (95%) of the co-owners, as**
 46 **required by this section; or**

47 **(B) another percentage of the co-owners specified in a**
 48 **statement described in subsection (a)(1) or (a)(2).**

49 **An agreement under this subsection is effective upon being**
 50 **recorded.**

51 **(c) Proceeds from the conveyance or encumbrance of common**

1 areas and facilities under this section shall be distributed to
 2 co-owners as common profits under IC 32-25-8-6. However, if the
 3 common areas and facilities conveyed or encumbered under this
 4 section include limited common areas and facilities, proceeds from
 5 the conveyance or encumbrance of the limited common areas and
 6 facilities shall be distributed to the owners of the limited common
 7 areas and facilities according to the percentage of the owners'
 8 undivided interest in the limited common areas and facilities.

9 (d) A conveyance or encumbrance of common areas and
 10 facilities not made in accordance with:

11 (1) this section; or

12 (2) a statement described in subsection (a)(1) or (a)(2);

13 is void.

14 SECTION 3. IC 32-25-7-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The owner of the
 16 land on which a condominium is declared shall record with the
 17 recorder of the county in which the land is situated a declaration.
 18 Except as provided in section 2 or 3 of this chapter, the declaration
 19 must include the following:

20 (1) A description of the land on which the building and
 21 improvements are or are to be located.

22 (2) A description of the building, stating:

23 (A) the number of stories and basements; and

24 (B) the number of condominium units.

25 (3) A description of the common areas and facilities.

26 (4) A description of the limited common areas and facilities, if
 27 any, stating to which condominium units their use is reserved.

28 (5) The percentage of undivided interest in the common areas and
 29 facilities appertaining to each condominium unit and its owner for
 30 all purposes, including voting.

31 (6) A statement of the percentage of votes by the condominium
 32 unit owners required to determine whether to:

33 (A) rebuild;

34 (B) repair;

35 (C) restore; or

36 (D) sell;

37 the property if all or part of the property is damaged or destroyed.

38 (7) Any covenants and restrictions in regard to the use of:

39 (A) the condominium units; and

40 (B) common areas and facilities.

41 (8) Any further details in connection with the property that:

42 (A) the person executing the declaration considers desirable;

43 and

44 (B) are consistent with this article.

45 (9) The method by which the declaration may be amended in a
 46 manner consistent with this chapter.

47 (10) A statement of the percentage of votes by the
 48 condominium unit owners required to convey or encumber
 49 part or all of the common areas and facilities. A statement
 50 under this subdivision may not allow less than ninety-five
 51 percent (95%) of the condominium unit owners, or less than

ninety-five percent (95%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities. If the declaration does not include a statement under this subdivision, IC 32-25-4-3.5 applies.

(b) A true copy of the bylaws shall be annexed to and made a part of the declaration.

(c) The record of the declaration shall contain a reference to the:

- (1) book;
- (2) page; and
- (3) date of record;

of the floor plans of the building affected by the declaration.

SECTION 4. IC 32-25-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The bylaws must provide for the following:

(1) With respect to the board of directors:

- (A) the election of the board from among the co-owners;
- (B) the number of persons constituting the board;
- (C) the expiration of the terms of at least one-third (1/3) of the directors annually;
- (D) the powers and duties of the board, including whether the board may engage the services of a manager or managing agent;
- (E) the compensation, if any, of the directors; and
- (F) the method of removal from office of directors.

(2) The method of calling meetings of the co-owners and the percentage, if other than a majority of co-owners, that constitutes a quorum.

(3) The election from among the board of directors of a president, who shall preside over the meetings of:

- (A) the board of directors; and
- (B) the association of co-owners.

(4) The election of a secretary, who shall keep the minute book in which resolutions shall be recorded.

(5) The election of a treasurer, who shall keep the financial records and books of account.

(6) The maintenance, repair, and replacement of the common areas and facilities and payments for that maintenance, repair, and replacement, including the method of approving payment vouchers.

(7) The manner of collecting from each condominium owner the owner's share of the common expenses.

(8) The designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities.

(9) The method of adopting and of amending administrative rules governing the details of the operation and use of the common areas and facilities.

(10) The restrictions on and requirements respecting the use and maintenance of the condominium units and the use of the common areas and facilities that are:

- 1 (A) not set forth in the declaration; and
2 (B) designed to prevent unreasonable interference with the use
3 of their respective units and of the common areas and facilities
4 by the several co-owners.
- 5 (11) The percentage of votes required to amend the bylaws.
- 6 **(12) A statement of the percentage of votes by the**
7 **condominium unit owners required to convey or encumber**
8 **part or all of the common areas and facilities. A statement**
9 **under this subdivision may not allow less than ninety-five**
10 **percent (95%) of the condominium unit owners, or less than**
11 **ninety-five percent (95%) of the owners of condominium units**
12 **not owned by the declarant, to convey or encumber part or all**
13 **of the common areas and facilities. If the bylaws do not**
14 **include a statement under this subdivision, IC 32-25-4-3.5**
15 **applies.**
- 16 ~~(12)~~ (13) Other provisions consistent with this article considered
17 necessary for the administration of the property.
(Reference is to ESB 261 as printed April 3, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 261

Signed by:

Senator Heinold
Chairperson

Representative Dembowski

Senator Tallian

Representative Dermody

Senate Conferees

House Conferees